

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION**

In the Matter of the Application of Otter Tail Corporation d/b/a/ Otter Tail Power Company for Authority to Increase Rates for Electric Utility Service in Minnesota

**FIRST PREHEARING ORDER**

A prehearing conference was held before Steve Mihalchick, Administrative Law Judge, on November 29, 2007, at the Public Utilities Commission, 350 Metro Square Building, 121 Seventh Place East, St. Paul, Minnesota. The following persons appeared:

Michael J. Bradley, Attorney at Law, Moss & Barnett, 90 South Seventh Street, 4800 Wells Fargo Center, Minneapolis, MN 55402, and Bruce Gerhardson, Associate General Counsel, Otter Tail Corporation, 215 South Cascade Street, P.O. Box 496, Fergus Falls, Minnesota 56538-0496, appeared on behalf of the Applicant Otter Tail Corporation d/b/a Otter Tail Power Company (Applicant, Otter Tail, or OTP).

Julia Anderson, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101, appeared on behalf of the Department of Commerce (Department).

Ronald M. Giteck, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, MN 55101, appeared on behalf of the Attorney General's Office, Residential Utilities Division (OAG/RUD).

Andrew P. Moratzka, Attorney at Law, Mackall Crounse & Moore, PLC, 1400 AT&T Tower, 901 Marquette Avenue, Minneapolis, MN 55402-2859, appeared on behalf of Enbridge Energy, Limited Partnership, and Enbridge Energy Company, Inc., (Enbridge).

Richard J. Savelkoul, Attorney at Law, Felhaber Larson Fenlon & Vogt, 444 Cedar Street, Suite 2100, St. Paul, Minnesota 55101-2136, appeared on behalf of the Minnesota Chamber of Commerce (the Chamber).

Commission staff Stuart Mitchell, Rates Analyst, was present.

Based upon the record and the discussion among the participants at the prehearing conference, the Administrative Law Judge makes the following:

## **ORDER**

### **Procedure**

1. The rules of the Office of Administrative Hearings govern the conduct of the hearings in this matter.
2. Notify the Office of Administrative Hearings as soon as possible if an accommodation or interpreter is needed for any of the hearings.
3. Requests of subpoenas for the attendance of witnesses or the production of documents shall be made to the Administrative Law Judge pursuant to Minn. R. 1400.7000. A copy of the subpoena request shall be served on the other parties. A subpoena request form is available at [www.oah.state.mn.us](http://www.oah.state.mn.us).

### **Parties, Intervention, and Public Participation**

4. The parties to this matter as named in the Commission's Notice and Order for Hearing issued November 13, 2007, are Otter Tail Power and the Department. The OAG/RUD filed a Notice of Appearance on November 26, 2007, and is a party pursuant to Minn. Stat § 216B.243, subd. 1. Prior to the prehearing conference, Petitions to Intervene were filed with the Administrative Law Judge by Enbridge, the Chamber, and Ag Processing, Inc. There was no objection to those Petitions and they were GRANTED at the prehearing conference. Minnesota Power subsequently petitioned to intervene as a non-party participant. Its petition is GRANTED and its representatives shall be placed on the service list.
5. Persons who wish to intervene as parties in this proceeding must file a Petition to Intervene that complies with Minn. R. 1400.6200 with the Administrative Law Judge no later than January 7, 2008. Copies of the Petition must be served upon all existing parties and the Commission. A Notice of Appearance shall be filed with the Petition. Objections to such petitions must be filed by with seven days of filing of the petition.
6. Members of the public need not become parties to participate in the hearing. Members of the public may participate in the public hearings and may offer either oral or written testimony and exhibits pursuant to Minn. R. 1400.6200, subp. 5, and 1400.7150, subp. 1. If time permits, public participation may also be permitted by the Administrative Law Judge during the evidentiary hearing. Any person who participates in a public or evidentiary hearing may be questioned by the parties and the ALJ. Written public comments must be received by the Administrative Law Judge no later than March 3, 2008.

### **Schedule**

7. The following schedule is adopted:

<b>Event or Document</b>	<b>Event Date or Due Date</b>
Initial Filing with Direct Testimony	October 1, 2007
Other Parties' Direct Testimony	January 31, 2008
Public Hearings	February 5, 2008, 1:00 p.m., Bemidji City Hall, 317 4th Street NW, Bemidji  February 5, 2008, 7:00 p.m., University of Crookston, Youngquist Auditorium, 2900 University Avenue, Crookston  February 6, 2008, 1:00 p.m., Morris City Hall, 609 Oregon Avenue, Morris  February 6, 2008, 7:00 p.m., City Hall Council Chambers, 112 West Washington, Fergus Falls.
Written Public Comments	March 3, 2008
All Parties' Rebuttal Testimony	March 3, 2008
All Parties' Surrebuttal Testimony	March 13, 2008
Evidentiary Hearing	March 24-28, 2008, 9:00 a.m., at the PUC
Initial Briefs	April 21, 2008
Reply Briefs and Proposed Findings	May 2, 2008
Anticipated ALJ Report	June 2, 2008
Anticipated Exceptions	June 17, 2008
Anticipated Oral argument	July 8, 2008
Anticipated Final Decision	August 1, 2008

8. Parties other than Applicant may, with prior permission of the Administrative Law Judge, file additional direct testimony on March 3, 2008. Permission must be requested one week prior thereto and demonstrate a genuine hardship that could not reasonably have been anticipated.

9. Nonpublic versions of prefiled testimony shall be efiled by the date indicated; hard copies thereof must be received by the ALJ and appropriate parties the following business day.

10. Notice of the public and evidentiary hearings shall be given by Otter Tail Power as set forth in the Commission's Notice and Order for Hearing.

## **Settlement**

11. Minn. Stat. § 216B.16, subd. 1(a), requires the Administrative Law Judge to convene a proceeding for the purpose of encouraging settlement of any or all of the issues in this proceeding. The Administrative Law Judge encourages the parties to discuss opportunities for settlement with each other prior to the public hearings. During the days of the public hearings, an informal conference will be held to discuss the progress of such discussions.

## **Discovery**

12. A party may serve requests for information on any other party. All requests for information shall be made in writing by e-mail, and the requesting party shall follow the e-mail with a copy of the request sent by regular U.S. mail or other delivery service to all parties. To the extent that a request includes material designated as Trade Secret or Nonpublic under the Minnesota Government Data Practices Act, Minn. Stat. Chap. 13, an e-mail request is required only between the requesting and responding party. Requests shall be sent to the person(s) designated to receive data requests by the party from whom the information is sought. Any request received by e-mail after 4:30 p.m. on a business day, on a weekend day, or on a Minnesota state holiday is considered received on the next business day.

13. The party responding to the request shall provide the requested information to the requesting party within eight days of receipt of the information request. If the information cannot be supplied within eight business days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and attempt to work out a schedule of compliance with the requesting party.

14. Responses to information requests shall be submitted by e-mail, and the responding party shall follow the e-mail with a copy of the response sent by regular U.S. mail or other delivery service, unless the receiving party agrees to accept responses by e-mail delivery only. If a response includes material designated as Trade Secret or Nonpublic, an e-mail response is required only between the requesting party and the responding party. Any response received after 4:30 p.m. on a business day is considered to be received the following business day.

15. If the responding party is unable to send the response by e-mail because of the volume or nature of information included in a response, the responding party shall send the response by facsimile, U.S. mail, or delivery so that the requesting party receives the entire response including any material designated as Trade Secret or

Nonpublic by the date due. Responding parties may utilize CDs to convey large volumes of data. If the response is sent by facsimile, the responding party shall follow the facsimile with a copy of the response sent by regular U.S. mail or other delivery service. There shall be a continuing obligation to update and supplement information responses with any responsive material that may subsequently be discovered or acquired by the responding party. The responsive information need not be supplied to other parties unless specifically requested by a party.

16. A party that wishes to receive e-mail copies of requests or responses shall notify the requesting or responding party, which shall provide the information in that format. If the request or response contains material designated as Trade Secret or Nonpublic information, the providing party may require that the requesting party comply with the terms of the Protective Order in this matter before providing the information.

17. No protective order is being issued at this time. Issuance of a protective order is reserved pending the parties' negotiation and Administrative Law Judge's approval of the terms of such an order.

18. Parties typically make blanket information requests for copies of all responses to other parties' information requests. Otter Tail Power requests that the process be modified so that Trade Secret or Nonpublic information need not be provided unless the requesting party specifically and separately requests a copy to the response. That request is **DENIED** because it will delay discovery to those parties entitled to receive it. Any responding party is still allowed to object and decline to provide all or certain Trade Secret or Nonpublic responses to any particular party, who may then raise the issue by a motion to compel.

19. The following persons shall be served with an e-mail copy of any information requests or responses addressed to Otter Tail Power.

Otter Tail Power (mnratecase@otpc.com)  
Ron Spangler (rlspangler@otpc.com)  
Bruce Gerhardson (bgerhardson@ottertail.com)  
Michael Bradley (bradley@moss-barnett.com)

Any necessary paper copies of information requests or responses shall be mailed to:

Ron Spangler, Jr.  
Otter Tail Power Company  
215 South Cascade Street  
Fergus Falls, MN 56537

20. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Such motions may be made informally by email and will normally be heard by telephone conference.

## **Prefiled Testimony**

21. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

22. Prefiled testimony shall be marked as an exhibit and offered for admission into the record at the hearing. A paper copy shall be provided for that purpose and the offering party shall provide the unique E-file identifying number of the document. The Administrative Law Judge will assign a hearing exhibit number to the document at the time that it is offered for admission at the hearing.

23. Prefiled testimony that is amended, or not offered into the record, shall be considered withdrawn and no witness shall be cross-examined concerning the withdrawn testimony. Any new affirmative matter that is not offered in reply to another party's direct case will not be allowed in rebuttal testimony and exhibits. Except for good cause shown, all revisions or corrections to any prefiled testimony shall be in writing and served upon the Administrative Law Judge and the parties no later than three days prior to the commencement of the evidentiary hearing.

## **Witnesses**

24. Subject to change by agreement of the parties or further order of the Administrative Law Judge, the order of testimony shall be: Applicant, Intervenors, OAG/RUD, the Department. Questioning of the witnesses shall proceed in the same order, followed by Commission staff and the Administrative Law Judge.

25. If a witness needs a day certain to offer testimony, the sponsoring party should attempt to reach agreement with the other parties and then submit a request to the Administrative Law Judge.

26. Witnesses shall be allowed ten minutes to summarize their prefiled testimony. For good cause shown, witnesses will be permitted to respond to any new matters not addressed in prefiled testimony through direct examination by counsel.

27. Parties shall examine and cross-examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through any one representative chosen by the party.

28. Except for good cause shown, objections by any party relative to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony (except surrebuttal testimony) shall be considered waived unless the objecting party states its objection by motion made to the Administrative Law Judge, no later than two weeks prior to commencement of the evidentiary hearing. Objections to surrebuttal testimony shall be filed and served no later than one week prior to commencement of the evidentiary hearing.

## **Filing of Documents (Excluding Information Requests and Responses)**

29. The original document shall be filed using the Commission's E-file system wherever feasible. Otherwise, the original document shall be filed by delivery or mail with the Administrative Law Judge.

30. The effective date of filing shall be the date the document is E-filed, mailed by U.S. Mail, or delivered to the Administrative Law Judge. Parties using the E-filing system should retain the unique document identifier as proof of filing through that system. Proof of service shall be filed with each document or within three business days thereafter.

31. With the exception of Trade Secret and other Nonpublic Data, copies of all documents that are filed shall be served by e-mail according to the attached service list by 4:00 p.m., and a hard copy shall also be mailed or delivered that day to the persons so indicated on the official service list. The list will be revised as necessary by the Office of Administrative Hearings.

32. Hard copies of trade secret and other nonpublic data shall be transmitted by U.S. Mail or delivery to the parties who have signed Exhibit A to the Protective Agreement and Order. Such documents may be served on the next business day following the filing of the public version.

33. After the Administrative Law Judge's Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission.

34. If Trade Secret or Nonpublic Data is filed with the Administrative Law Judge, it shall be prepared and marked in accordance with the Public Utilities Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data. The procedures may be viewed at [www.puc.state.mn.us/docs/tradsecret.pdf](http://www.puc.state.mn.us/docs/tradsecret.pdf). Access to nonpublic data shall be governed by the Protective Agreement and Order to be issued in this proceeding.

Dated: December 13, 2007

s/Steve M. Mihalchick  
STEVE M. MIHALCHICK  
Administrative Law Judge